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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/828,413	04/06/2001	Robert H. DeBellis	59469/JPW/SHS/MVM	5162
7	590 02/05/2003			
Cooper & Dunham LLP			EXAMINER	
1185 Avenue o New York, NY	of the Americas 10036		SAUCIER, SANDRA E	
			ART UNIT	PAPER NUMBER
			1651	6
			DATE MAILED: 02/05/2003	,

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. 09/828,413

Applicant(s)

DeBellis et al.

Examiner

Sandra Saucier

Art Unit **1651** 



The MAILING DATE of this communication appears	on the cover sheet with the correspondence address
Period for Reply	
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In	
mailing date of this communication.  If the period for reply specified above is less than thirty (30) days, a reply within the If NO period for reply is specified above, the maximum statutory period will apply Failure to reply within the set or extended period for reply will, by statute, cause the Any reply received by the Office later than three months after the mailing date of earned patent term adjustment. See 37 CFR 1.704(b).	and will expire SIX (6) MONTHS from the mailing date of this communication. he application to become ABANDONED (35 U.S.C. § 133).
Status	
1) Responsive to communication(s) filed on	•
2a) ☐ This action is <b>FINAL</b> . 2b) ☒ This ac	tion is non-final.
3) Since this application is in condition for allowance closed in accordance with the practice under Ex pa	except for formal matters, prosecution as to the merits is arte Quayle, 1935 C.D. 11; 453 O.G. 213.
Disposition of Claims	
4) 💢 Claim(s) <u>1-19</u>	is/are pending in the application.
4a) Of the above, claim(s)	is/are withdrawn from consideration.
5)	is/are allowed.
6)	is/are rejected.
7)	is/are objected to.
8) 💢 Claims 1-19	are subject to restriction and/or election requirement.
Application Papers	
9) $\square$ The specification is objected to by the Examiner.	
10) The drawing(s) filed on is/are	e a) $\square$ accepted or b) $\square$ objected to by the Examiner.
Applicant may not request that any objection to the o	drawing(s) be held in abeyance. See 37 CFR 1.85(a).
11) The proposed drawing correction filed on	is: a) $\square$ approved b) $\square$ disapproved by the Examiner.
If approved, corrected drawings are required in reply	to this Office action.
12) The oath or declaration is objected to by the Exam	iner.
Priority under 35 U.S.C. §§ 119 and 120	
13) Acknowledgement is made of a claim for foreign p	riority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:	
1. Certified copies of the priority documents have	ve been received.
2. Certified copies of the priority documents have	ve been received in Application No
application from the International Bure	
*See the attached detailed Office action for a list of th	e certified copies not received.
14) Acknowledgement is made of a claim for domestic	
a) U The translation of the foreign language provisional	
15) ☐ Acknowledgement is made of a claim for domestic	priority under 35 U.S.C. §§ 120 and/or 121.
Attachment(s)	41 1 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
<ol> <li>Notice of References Cited (PTO-892)</li> <li>Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> </ol>	4) Interview Summary (PTO-413) Paper No(s).
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s).	5) Notice of Informal Patent Application (PTO-152)  6) Other:
-,	of [1] onto:

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## **DETAILED ACTION**

Claims 1-19 are pending and subject to restriction.

## Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 10, 13-19, drawn to a first method, a method of treating a subject with sickle cell disease comprising administering an antiviral agent, classified in class 514, subclass? depending on the treatment agent.
- II. Claims 2-4, 8, 9, 12, drawn to a second method, a method of inhibiting polymerization of hemoglobin comprising contacting the hemoglobin with an antiviral agent, classified in class 436, subclass 66.
- III. Claims 5 and 11, drawn to a third method, a method of determining whether an antiviral agent is capable of treating a subject afflicted with sickle cell disease, classified in class 436, subclass 8.
- IV. Claim 6, drawn to a fourth method, a method of determining whether an antiviral agent is capable of inhibiting sickling of a cell, classified in class 435, subclass 7.8.
- V. Claim 7, drawn to a fifth method, a method of determining whether an antiviral agent is capable of inhibiting the polymerization of hemoglobin, classified in class 436, subclass 66.

This application contains claims directed to the following patentably distinct species of the claimed invention: acyclovir and valacylovir.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, 4-7 are generic.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The inventions are distinct, each from the other because of the following reasons:

The processes are distinct from one another because they recite different and distinct steps which lead to different and distinct products.

The several inventions listed above are independent and distinct from one another as they have acquired a separate status in the art and require independent searches, particularly with regard to the literature searches. Clearly, a reference which would anticipate one of the above groups would not necessarily anticipate or even make obvious any of the others.

An undue burden would ensue from the examination of multiple methods which have distinct steps and end points. Burden lies not only in the search of US Patents, but in the search for literature and foreign patents and examination of the claim language and specification for compliance with the statutes concerning new matter, distinctness and scope of enablement.

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Because these inventions are distinct for the reasons given above restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1651. The supervisor for 1651 is M. Wityshyn, (703) 308-4743. The normal work schedule for Examiner Saucier is 8:30AM to 5:00PM Monday and Tuesday and 8:30 to noon on Wednesday.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Saucier whose telephone number is (703) 308–1084. Status inquiries must be directed to the Customer Service Desk at (703) 308–0197 or (703)–308–0198. The number of the Fax Center for the faxing of papers is (703) 308–2742 or (703) 305–3592.

Sandra Saucier Primary Examiner Art Unit 1651 February 3, 2003